

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEVIN FERNANDEZ,)	3:10-CV-0373-LRH (VPC)
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
)	
vs.)	October 10, 2013
)	
STATE OF NEVADA, et al.,)	
)	
Defendants.)	
_____)	

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: LISA MANN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Two motions to issue summons are pending before the court. The court will address each motion in turn.

Plaintiff's motion #92

Plaintiff's motion for court to issue and serve summons and complaint (#92) is **GRANTED**.

The Clerk shall issue a summons for **Rex Reed** and send the same to the U.S. Marshal with the address provided under seal (#87). The Clerk shall send to plaintiff one USM-285 form, one copy of the second amended complaint (#85), and one copy of this order for the defendant. Plaintiff shall have until **Friday, October 25, 2013** to complete the USM-285 service forms and return them along with the other documents to the U.S. Marshal for service.

Plaintiff's motion #93

Plaintiff's motion for leave to file supplemental points and authorities in support of motion to issue and serve summons and complaint (#93) is **DENIED**. The State of Nevada, the Nevada Department of Corrections, and the Nevada Board of Parole were dismissed with prejudice in the court's screening order (#36) as follows:

As an initial matter, while the plaintiff names the State of Nevada,
NDOC and the Nevada Board of Parole as defendants, states and

any governmental agency that is an arm of the state are not persons for the purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997); *Hale v. Arizona*, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc); *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991); *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007). Section 1983 claims against states or a governmental entity that is an arm of the state, therefore, are legally frivolous. *See Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989), superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Because NDOC and the Nevada Parole Board are arms of the State, they are not persons for the purposes of § 193. *See Doe*, 131 F.3d 836; *Black v. Nevada Dept. of Corrections*, 2010 WL 2545760 at *2 (Slip Copy, June 21, 2010, D.Nev.). Accordingly, the claims against the State of Nevada, NDOC and the Nevada Board of Parole are dismissed with prejudice.

Id. at page 3.

Plaintiff did not name the State of Nevada nor the Nevada Board of Parole in his second amended complaint. Plaintiff did name the Nevada Department of Corrections; however, although the court permitted plaintiff to file a second amended complaint, it did not permit him to add defendants that have been dismissed with prejudice (#84).

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: _____/s/_____
Deputy Clerk